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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND
EASTERN DIVISION

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
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UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL D. EMERY, TRUSTEE OF THE
PAUL D. EMERY REVOCABLE LIVING
TRUST, and

6 ACRES OF LAND, More or Less,
Located in Summit County, Ohio,

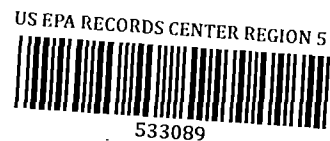
Defendants

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274

CIVIL ACTION NO.

JUDGE GWIN



CONSENT DECREE

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred for response actions taken in connection with the release or threatened release of hazardous substances at the Copley Square Plaza Site located at 2777 through 2799 Copley Road, Copley Township, Summit County, Ohio ("the Site").

B. EPA's claim for response costs is secured by a federal Superfund lien perfected on the Site on June 13, 1997 with the Summit County Recorder's Office, Summit County, Ohio, pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1).

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C. Without trial or admission of any issue of law, fact or liability, Settling Defendant as defined in Section IV, paragraph 3(o), has entered into this Consent Decree in order to resolve the alleged liability associated with the transactions or occurrences alleged in the Complaint.

D. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, Settling Defendant, and any successor Trustee of the Paul D. Emery Revocable Living Trust. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no

way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "O'Shux Property" shall mean the property located adjacent to the Site at 2715 Copley Road, Copley, Summit County, Ohio, which is owned by O'Shux Inc.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and the Settling Defendant.

k. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the date of entry of this Consent Decree, plus accrued Interest on all such costs through such date.

l. "Person" shall mean an individual, firm, corporation, association, partnership, consortium, joint venture and/or commercial entity. Person does not include the United States or any of its employees, agencies or instrumentalities.

m. "Plaintiff" shall mean the United States.

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendant" shall mean Paul D. Emery, Trustee of the Paul D. Emery Revocable Living Trust and 6 Acres of Land, More or Less, located in Summit County, Ohio.

p. "Site" shall mean the Copley Square Plaza Site, encompassing approximately six (6) acres, located at 2777 through 2799 Copley Road, Copley Township, Summit County, Ohio and designated by the property description attached as Appendix A, and any areas where hazardous substances from the Copley Site come to be located.

q. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. SALE OF COPLEY SITE PROPERTY

4. Within sixty (60) days of the entry of this Consent Decree, Settling Defendant shall make all good-faith efforts to obtain the highest purchase offer possible for the Site without utilizing the services of a realtor. Settling Defendant agrees to confer with the United States with respect to all purchase offers received for the Site, and agrees that the final sale shall be subject to the United States' written approval. Settling Defendant shall receive no fee for his services in attempting to sell the Site.

5. If the Settling Defendant is unable to sell the Site within the sixty (60) day time period set forth in paragraph 4, Settling Defendant shall provide to the United States the names, addresses, telephone numbers, and commission or fee schedules of at least two licensed brokers, dealers, or agents in close proximity to the Site who usually deal with the type of property in question. Settling Defendant cannot act as a broker.

6. The United States shall select a broker, dealer or agent from those proposed by Settling Defendant pursuant to paragraph 5, or in the event that the United States deems such brokers, dealers or agents unacceptable, in any other manner deemed appropriate by the United States.

7. Commencing within fifteen (15) days after the United States notifies Settling Defendant of its selection of a broker, dealer or agent in accordance with paragraphs 5 and 6, Settling Defendant shall use its best efforts to sell the Site. "Best Efforts," for purposes of this paragraph, shall include, but not be limited to:

- (a) listing the Site with a broker, dealer, or agent who usually deals with the type of property in question and is approved by the United States pursuant to paragraph 6;

- (b) responding to the reasonable inquiries of prospective buyers;

- (c) maintaining the Site in a condition suitable for exhibition to prospective buyers;

(d) allowing the Site to be shown at all reasonable times and

(e) assisting the broker, dealer or agent in any other reasonable way requested in an effort to sell the Site at the highest price possible and as quickly as possible.

8. Settling Defendant shall ensure that the listing agreement with the broker, dealer or agent provides that said broker, dealer or agent shall timely provide to EPA and DOJ copies of all advertising published with respect to the Site, indicating when such advertising is/was displayed. Copies shall be considered timely if the copies arrive at U.S. EPA and DOJ within the month such advertising is/was displayed. The United States reserves the right to direct the selected broker, dealer and/or agent, in writing, to add, delete, or otherwise reasonably modify advertising copy.

9. Settling Defendant agrees that it shall not execute a contract for the sale of the Site, without prior notice to, and approval by, the United States of the terms of any proposed sale. Settling Defendant agrees that it will not hold a mortgage from the purchaser of the Site. If Settling Defendant identifies a prospective purchaser for the Site and the United States determines that such prospective purchaser is suitable in accordance with EPA's Prospective Purchaser policies, which determination shall not be unreasonably withheld, Settling Defendant shall convey the Site to the prospective purchaser upon

the written approval of the United States. Settling Defendant has no right to refuse to sell the Site if the prospective purchaser agrees to purchase the Site for \$500,000 or more. If the United States determines that an amount below \$500,000 is acceptable to it, and Settling Defendant disagrees with the United States and contends that the amount deemed acceptable by the United States is insufficient, Settling Defendant shall have sixty days from the date that the purported insufficient offer is conveyed, to reach an agreement with another prospective purchaser of the Site for a higher amount. The United States agrees to provide the prospective purchaser of the Site with a prospective purchaser agreement, for no additional consideration from such prospective purchaser, that releases the prospective purchaser from liability under CERCLA, except to the extent that the prospective purchaser exacerbates or adds to the existing contamination at the Site. Settling Defendant agrees to close the sale of the Site within thirty (30) days of execution of the contract for sale of the Site, unless otherwise agreed to by both Parties.

VI. REIMBURSEMENT OF RESPONSE COSTS

10. Within fifteen (15) days of closing on the sale of the Site, Settling Defendant shall pay to the United States, as reimbursement of past response costs, a sum equal to eighty five percent (85%) of the "net proceeds" of the sale of the Site. The net proceeds of the sale of the Site shall be calculated by

subtracting from the purchase price the following costs: (a) the real estate agent commission (including advertising costs), if any; (b) any recording fees; (c) any transfer taxes; (d) attorney fees related solely to the closing; and (e) payment of \$37,000 to the secured creditors identified in Appendix B. At the same time as the Settling Defendant pays the 85% of the net proceeds from the sale of the Site, Settling Defendant shall provide the United States with an accounting identifying the purchase price, the net proceeds, and each item subtracted from the purchase price to obtain the "net proceeds" amount. The net proceeds that the United States will recover shall be capped at \$720,000.

11. Payment pursuant to Paragraph 10 shall be made via electronic funds transfer in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Ohio following lodging of the Consent Decree. Any payments received by the United States after 4:00 p.m. Eastern Time shall be credited on the next business day. Notice of payment shall be sent to those persons listed in Section XIII (Notices and Submissions) and to EPA Region V Financial Management Officer at U.S. EPA Region V, Attn: Superfund Accounting, P.O. Box 70753, Chicago, IL 60673.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

12. Interest on Late Payments. In the event that any payment required by Section VI (Reimbursement of Response Costs)

or Section VII, Paragraph 13 (Stipulated Penalties), is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

13. Stipulated Penalties.

If Settling Defendant fails to comply with the deadlines and obligations imposed on Settling Defendant by Section V (Sale of the Copley Site Property), and/or if any amounts due to EPA from Settling Defendant under this Consent Decree under Section VI (Reimbursement of Response Costs) are not paid by the required date, Settling Defendant shall pay to the United States, as a stipulated penalty, in addition to any Interest required by Paragraph 12, \$500 per violation per day that Settling Defendant fails to comply with the specified deadlines and obligations and/or such payment is late. If Settling Defendant complies with the deadlines and obligations of Sections V and VI within fourteen days from the dates that performance pursuant to said deadlines and obligations were due under those Sections, the United States will limit its recovery to include stipulated penalties and Interest only.

14. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under Paragraph 13 shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to: U.S. EPA Region 5, Attn. Superfund Accounting, P.O. Box 70753, Chicago, IL 60673. All

payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, EPA Region V, EPA Site Spill ID Number 05XW, and DOJ Case Number 90-11-3-1717. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XIII (Notices and Submissions) and to EPA Region V Financial Management Officer at U.S. EPA Region 5, Attn. Superfund Accounting, P.O. Box 70753, Chicago, IL 60673.

15. Penalties shall accrue as provided in paragraph 13 regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

16. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs, including but not limited to costs of attorney time, incurred by the United States in enforcing any consent decree requirement which Settling Defendant is deemed to have violated.

17. Payments made under Paragraph 13 (Stipulated Penalties) shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree if Settling Defendant does not cure such failures within the fourteen day time period set forth in paragraph 13. Settling Defendant reserves the right to raise any and all claims and/or defenses it may have in any future action by Plaintiff to pursue remedies or sanctions (in addition to stipulated penalties) for an alleged failure to comply with a Consent Decree requirement.

18. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

19. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 21 (Reservation of Rights by United States), the United States covenants not to sue or take administrative action against Settling Defendant, or any successor Trustee of the Paul D. Emery Revocable Living Trust, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the claims alleged in the Complaint. This covenant not to sue shall take effect upon the United States' approval of a final sale of the Site, and receipt by the United States of all payments required by Section VI Paragraph 10 (Reimbursement of

Response Costs) and Section VII, Paragraphs 12 (Interest on Late Payments) and 13 (Stipulated Penalties). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant, and any successor Trustee of the Paul D. Emery Revocable Living Trust and does not extend to any other person.

20. Removal of Lien. Subject to the Reservation of Rights in Paragraph 21 of this Agreement, upon the United States' approval of a final sale of the Site, and receipt by the United States' of all payments required by Section VI paragraph 10 (Reimbursement of Response Costs), and Section VII, Paragraphs 12 (Interest on Late Payments) and 13 (Stipulated Penalties) EPA agrees to remove the United States' lien filed against the Site pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1).

21. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 19 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree, except as provided for in paragraph 13;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and

d. liability for any future response costs which may be incurred at the Site due to existing contamination, provided, however, that Settling Defendant reserves the right to raise any and all claims and/or defenses it may have, including any defense set forth in CERCLA § 107(b), in any action associated with liability for future response costs at the Site.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT

22. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

24. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

25. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.

26. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 30 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or

claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

XI. PROSPECTIVE PURCHASER AGREEMENT FOR O'SHUX PROPERTY

28. Within forty five (45) days from the entry of this Consent Decree and a request for a PPA from a prospective purchaser of the O'Shux Inc. property, the United States agrees, for no additional consideration, to publish a PPA with the prospective purchaser of the O'Shux Inc. property in the Federal Register. The PPA grants the prospective purchaser of the O'Shux

Inc. property a covenant not to sue by Plaintiff with respect to any liability under CERCLA for releases or threatened releases of hazardous substances from the Site that are located or come to be located at the O'Shux Inc. property.

XII. RETENTION OF RECORDS

29. For five (5) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the liability of any person for response actions conducted or to be conducted at the Site.

30. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document,

record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

31. By signing this Consent Decree, Settling Defendant certifies individually that, to the best of his knowledge and belief, he has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in his possession, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to his potential liability regarding the Site, after

notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

XIII. NOTICES AND SUBMISSIONS

32. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ #90-11-3-1717)
P.O. Box 7611
Washington, D.C. 20044-7611

Frances M. Zizila
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-5406

As to EPA:

Roger Grimes, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region V
77 West Jackson Blvd.
Chicago, Illinois 60604

As to Settling Defendant:

Shane A. Farolino, Esq.
Roetzel & Andress
75 East Market Street
Akron, Ohio 44308-2098

Paul D. Emery
1357 Sollman Avenue
Copley, Ohio 44321

XIV. RETENTION OF JURISDICTION

33. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION

34. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

35. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment.

The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

36. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. EFFECTIVE DATE

37. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVIII. SIGNATORIES/SERVICE

38. The undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

39. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified

Settling Defendant in writing that it no longer supports entry of the Consent Decree.

40. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS 25 DAY OF March, 1999.




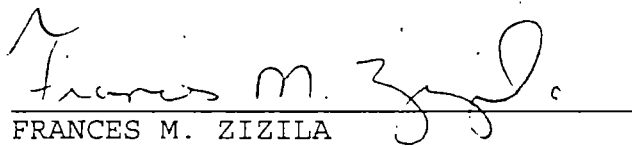
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Paul D. Emery, Trustee of the Paul D. Emery Revocable Living Trust and 6 ACRES OF LAND, More or Less, Located in Summit County, Ohio, relating to the Copley Square Plaza Superfund Site.

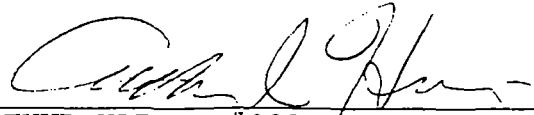
FOR THE UNITED STATES OF AMERICA

Date: 1-1-81


LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20044


FRANCES M. ZIZILA
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611

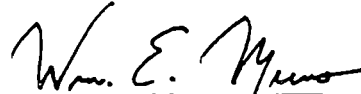
EMILY M. SWEENEY
United States Attorney
Northern District of Ohio

A handwritten signature in cursive script, appearing to read 'Arthur Harris', is written over a horizontal line.

ARTHUR HARRIS #0027128
Assistant United States Attorney
Northern District of Ohio
1800 Bank One Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2600
(216) 622-3711

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Paul D. Emery, Trustee of the Paul D. Emery Revocable Living Trust and 6 ACRES OF LAND, More or Less, Located in Summit County, Ohio, relating to the Copley Square Plaza Superfund Site.

FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY



WILLIAM E. MUNO
Director of Superfund Division
Environmental Protection Agency,
Region 5
77 W. Jackson Blvd.
Chicago, Ill. 60604



Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region V
77 West Jackson Blvd.
Chicago, Illinois 60604

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FOR SETTLING DEFENDANT

Date:

9-17-98

Paul D. Emery Trustee

PAUL D. EMERY, TRUSTEE OF THE
PAUL D. EMERY REVOCABLE LIVING
TRUST

1357 SOLLMAN AVENUE
COPLEY, OHIO 44321

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: Shane A. Farolino, Esq.
Roetzel & Andress
A Legal Professional Association

Title: Attorney for Settling Defendant

Address: 75 East Market Street
Akron, Ohio 44308
Phone: (330) 376-2700
Fax: (330) 376-4577

APPENDIX A
Copley Square Plaza Site
2777 through 2799 Copley Road, Copley Township, Summit County, Ohio

Situated in the Township of Copley, County of Summit and State of Ohio and known as being part of Lot No. 27 of said Township, and more fully bounded and described as follows: Beginning at a spike set at the intersection of the centerline of Copley Road (S.H. No. 162) 60' wide with centerline of Jacoby Road (C.H. No. 205) 60' wide; Thence South 57 degrees 19' 23" East along the centerline of Copley Road 830.00 feet to a spike (witness an Iron Pin set North 0 degrees 05' 12" West 35.68 feet from this point); Thence North 0 degrees 05' 12" West parallel with the centerline of Jacoby Road a distance of 979.18 feet to lead-center monument; Thence South 89 degrees 54' 48" West at right angle to the centerline of Jacoby Road 697.96 feet to a spike set on the centerline of Jacoby Road (witness an Iron Pin set North 89 degrees 54' 48" East 30.00 feet from this point; Thence South 0 degrees 05' 12" East along the centerline of Jacoby Road 530.00 feet to the place of beginning, as surveyed February, 1959 by Robert J. Fish, Registered Surveyor No. 4240.

Exception therefrom the following:

Parcel No. 1

Situated in the Township of Copley, County of Summit and State of Ohio and known as being a part of Lot No. 27 of said Township and being more fully described as follows: Beginning at the centerline intersection of Copley Road (State Highway No. 162) and Jacoby Road (County Highway No. 205). Thence North 0 degrees 05' 12" West along the centerline of Jacoby Road, a distance of 152.50 feet to a point, said point being the true place of beginning of the parcel herein described; Thence continuing North 0 degrees 05' 12" West along said centerline of Jacoby Road, a distance of (377.50) feet to a point; Thence North 89 degrees 54' 48" East perpendicular with the centerline of Jacoby Road, a distance (361.50) feet to a point; Thence South 0 degrees 05' 12" East parallel with the centerline of Jacoby Road a distance of (377.50) feet to a point; thence South 89 degrees 54' 48" West, a distance of (361.00) feet to the place of beginning, as surveyed in February 1973 by Robert J. Schleicher, Registered Surveyor, with Emmet J. McDonald and Associates.

Parcel No. 2

Situated in the Township of Copley, County of Summit and State of Ohio and known as being part of Original Lot 27 in said Township, more fully described as follows: Beginning at the centerline intersection of Copley Road (State Route No. 162) and Jacoby Road (County Highway No. 205); Thence North 00 degrees 05' 12" West, along the centerline of Jacoby Road, a distance of 106.37 feet to a point; Thence North 89 degrees 54' 48" East a distance of 155.00 feet to an iron pipe and passing over an iron pipe set a distance of 30 feet from the centerline of Jacoby Road; Thence South 00 degrees 28' 06" East, a distance of 207.01 feet to a point in the centerline of Copley Road and passing over an iron pipe set a distance of 35.83 feet from said centerline; Thence North 57 degrees 19' 23" W., along the centerline of Copley Road, a distance of 185.96 feet to the place of beginning as surveyed in November, 1974 by Walter W. Dobbins, Registered Surveyor with Emmet J. McDonald and Associates.

APPENDIX B

132355-102

JAMES J. AUDITOR
FEE \$ 18

COUNTY OF SUMMIT
RECEIVED & RECORDED

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O.R. PG. 1102-1105

MAIL TO: *[Signature]*

DOCUMENT NUMBER

OFFICIAL RECORD
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(PAGE 1 OF RECORD)

MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that **PAUL D. EMERY, TRUSTEE OF THE PAUL D. EMERY REVOCABLE LIVING TRUST, DATED DECEMBER 20, 1990** (hereinafter referred to as the "Mortgagor"), for Ten and No/100ths Dollars (\$10.00) paid, grants with mortgage covenants, to **ROBERT EMERY and DARLEEN EMERY** (hereinafter referred to as the "Mortgagee"), the following real property:

Situated in the Township of Copley, County of Summit and State of Ohio and known as being part of Lot No. 27 of said Township, and more fully bounded and described as follows: Beginning at a spike set at the intersection of the centerline of Copley Road (S.H. No. 162) 60' wide with centerline of Jacoby Road (C.H. No. 205) 60' wide; Thence South 57 degrees 19' 23" East along the centerline of Copley Road 830.00 feet to a spike (witness an Iron Pin set North 0 degrees 05' 12" West 35.68 feet from this point); Thence North 0 degrees 05' 12" West parallel with the centerline of Jacoby Road a distance of 979.18 feet to lead-center monument; Thence South 89 degrees 54' 48" West at a right angle to the centerline of Jacoby Road 697.96 feet to a spike set on the centerline of Jacoby Road (witness an Iron Pin set North 89 degrees 54' 48" East 30.00 feet from this point; Thence South 0 degrees 05' 12" East along the centerline of Jacoby Road 530.00 feet to the place of beginning, as surveyed February, 1959 by Robert J. Fish, Registered Surveyor No. 4240.

Exception therefrom the following:

Parcel No. 1

Situated in the Township of Copley, County of Summit and State of Ohio and known as being a part of Lot No. 27 of said Township and being more fully described as follows: Beginning at the centerline intersection of Copley Road (State Highway No. 162) and Jacoby Road, a distance of 152.50 feet to a point, said point being the true place of beginning of the parcel herein described; Thence continuing North 0 degrees 05' 12" West along said centerline of Jacoby Road, a distance of (377.50) feet to a point; Thence North 89 degrees 54' 48" East perpendicular with the centerline of Jacoby Road, a distance (361.50) feet to a point; Thence South 0 degrees 05' 12" East parallel with the centerline of Jacoby Road a distance of (377.50) feet to a point; thence South 89 degrees 54' 48" West, a distance of (361.00) feet to the place of beginning, as surveyed in February 1973 by Robert J. Schleicher, Registered Surveyor, with Emmet J. McDonald and Associates.

Parcel No. 2

Situated in the Township of Copley, County of Summit and State of Ohio and known as being part of Original Lot 27 in said Township, more fully

described as follows: Beginning at the centerline intersection of Copley Road (State Route No. 162) and Jacoby Road (County Highway No. 205); Thence North 00 degrees 05' 12" West, along the centerline of Jacoby Road, a distance of 106.37 feet to a point; Thence North 89 degrees 54' 48" East a distance of 155.00 feet to an iron pipe and passing over an iron pipe set a distance of 30 feet from the centerline of Jacoby Road; Thence South 00 degrees 28' 06" East, a distance of 207.01 feet to a point in the centerline of Copley Road and passing over an iron pipe set a distance of 35.83 feet from said centerline; Thence North 57 degrees 19' 23" W., along the centerline of Copley Road, a distance of 185.96 feet to the place of beginning as surveyed in November, 1974 by Walter W. Dobbins, Registered Surveyor with Emmet J. McDonald and Associates.

The said mortgage covenants are subject, however, to all applicable zoning and use restrictions; legal highways; taxes and assessments not yet due and payable; and all restrictions, conditions, limitations, rights of way, reservations and easements of record which will not render title to the premises unmarketable.

This Mortgage is given, upon the statutory conditions, to secure the payment of Ten Thousand Dollars (\$10,000.00) with interest as provided in note dated January 16, 1995.

"Statutory condition" is defined in section 5302.14 of the Revised Code and provides generally that if the Mortgagor pays the principal and interest secured by this Mortgage, performs the other obligations secured hereby and the conditions of any prior mortgage, pays all the taxes and assessments, maintains insurance against fire and other hazards, and does not commit or suffer waste, then this Mortgage shall be void.

IN WITNESS WHEREOF, the said Mortgagor herein caused this document to be signed this 5th day of February, 1997.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

Sandra L. McGee

First Witness

Sandra L. McGee

(Print or Type Name)

William M. Coyne III

Second Witness

William M. Coyne III

(Print or Type Name)

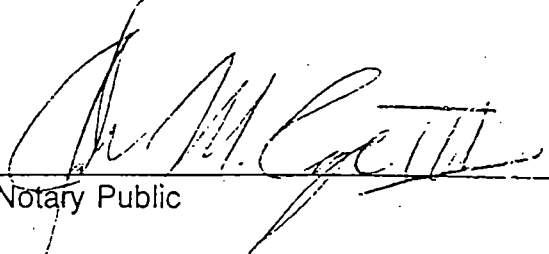
By: Paul D. Emery Trustee

PAUL D. EMERY, Trustee of the
Paul D. Emery Revocable living Trust
dated December 20, 1990

STATE OF OHIO)
) ss:
 COUNTY OF SUMMIT)

Before me, a notary public, in and for said County, personally appeared the above-named **PAUL D. EMERY, TRUSTEE OF THE PAUL D. EMERY REVOCABLE LIVING TRUST, DATED DECEMBER 20, 1990**, who acknowledged that he did sign and seal the foregoing instrument, and that the same is his free act and deed.

5th IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of February, 1997.



 Notary Public

My Commission Expires:

John M. COYNE, Attorney-At-Law
 Notary Public - State of Ohio

My Commission has no expiration date
 Sec. 147.03 R.C.

This Instrument Prepared By:
 Roetzel & Andress
 A Legal Professional Association
 75 East Market Street
 Akron, OH 44308

122355-1410

JAMES F. ... AUDITOR
FEE 3

18

242828

COUNTY OF SUMMIT
RECEIVED & RECORDED

97 FEB -5 PM 3:35

O.R. PG. 110. 1113

MAIL TO:

DOCUMENT NUMBER

OFFICIAL RECORD
(DO NOT REMOVE FROM RECORD
(PAGE 1 OF RECORD)

MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that **PAUL D. EMERY, TRUSTEE OF THE PAUL D. EMERY REVOCABLE LIVING TRUST, DATED DECEMBER 20, 1990** (hereinafter referred to as the "Mortgagor"), for Ten and No/100ths Dollars (\$10.00) paid, grants with mortgage covenants, to **TIMOTHY JOHNSON** (hereinafter referred to as the "Mortgagee"), the following real property:

Situated in the Township of Copley, County of Summit and State of Ohio and known as being part of Lot No. 27 of said Township, and more fully bounded and described as follows: Beginning at a spike set at the intersection of the centerline of Copley Road (S.H. No. 162) 60' wide with centerline of Jacoby Road (C.H. No. 205) 60' wide; Thence South 57 degrees 19' 23" East along the centerline of Copley Road 830.00 feet to a spike (witness an Iron Pin set North 0 degrees 05' 12" West 35.68 feet from this point); Thence North 0 degrees 05' 12" West parallel with the centerline of Jacoby Road a distance of 979.18 feet to lead-center monument; Thence South 89 degrees 54' 48" West at a right angle to the centerline of Jacoby Road 697.96 feet to a spike set on the centerline of Jacoby Road (witness an Iron Pin set North 89 degrees 54' 48" East 30.00 feet from this point; Thence South 0 degrees 05' 12" East along the centerline of Jacoby Road 530.00 feet to the place of beginning, as surveyed February, 1959 by Robert J. Fish, Registered Surveyor No. 4240.

Exception therefrom the following:

Parcel No. 1

Situated in the Township of Copley, County of Summit and State of Ohio and known as being a part of Lot No. 27 of said Township and being more fully described as follows: Beginning at the centerline intersection of Copley Road (State Highway No. 162) and Jacoby Road, a distance of 152.50 feet to a point, said point being the true place of beginning of the parcel herein described; Thence continuing North 0 degrees 05' 12" West along said centerline of Jacoby Road, a distance of (377.50) feet to a point; Thence North 89 degrees 54' 48" East perpendicular with the centerline of Jacoby Road, a distance (361.50) feet to a point; Thence South 0 degrees 05' 12" East parallel with the centerline of Jacoby Road a distance of (377.50) feet to a point; thence South 89 degrees 54' 48" West, a distance of (361.00) feet to the place of beginning, as surveyed in February 1973 by Robert J. Schleicher, Registered Surveyor, with Emmet J. McDonald and Associates.

Parcel No. 2

Situated in the Township of Copley, County of Summit and State of Ohio and known as being part of Original Lot 27 in said Township, more fully

described as follows: Beginning at the centerline intersection of Copley Road (State Route No. 162) and Jacoby Road (County Highway No. 205); Thence North 00 degrees 05' 12" West, along the centerline of Jacoby Road, a distance of 106.37 feet to a point; Thence North 89 degrees 54' 48" East a distance of 155.00 feet to an iron pipe and passing over an iron pipe set a distance of 30 feet from the centerline of Jacoby Road; Thence South 00 degrees 28' 06" East, a distance of 207.01 feet to a point in the centerline of Copley Road and passing over an iron pipe set a distance of 35.83 feet from said centerline; Thence North 57 degrees 19' 23" W., along the centerline of Copley Road, a distance of 185.96 feet to the place of beginning as surveyed in November, 1974 by Walter W. Dobbins, Registered Surveyor with Emmet J. McDonald and Associates.

The said mortgage covenants are subject, however, to all applicable zoning and use restrictions; legal highways; taxes and assessments not yet due and payable; and all restrictions, conditions, limitations, rights of way, reservations and easements of record which will not render title to the premises unmarketable.

This Mortgage is given, upon the statutory conditions, to secure the payment of Twelve Thousand Dollars (\$12,000.00) with interest as provided in note dated October 6, 1994.

"Statutory condition" is defined in section 5302.14 of the Revised Code and provides generally that if the Mortgagor pays the principal and interest secured by this Mortgage, performs the other obligations secured hereby and the conditions of any prior mortgage, pays all the taxes and assessments, maintains insurance against fire and other hazards, and does not commit or suffer waste, then this Mortgage shall be void.

IN WITNESS WHEREOF, the said Mortgagor herein caused this document to be signed this 5th day of February, 1997.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

Sandra L. McGee

First Witness

Sandra L. McGee

(Print or Type Name)

John M. Cope III

Second Witness

John M. Cope III

(Print or Type Name)

By: Paul D. Emery Trustee

PAUL D. EMERY, Trustee of the
Paul D. Emery Revocable living Trust
dated December 20, 1990

STATE OF OHIO)
) ss:
 COUNTY OF SUMMIT)

Before me, a notary public, in and for said County, personally appeared the above-named **PAUL D. EMERY, TRUSTEE OF THE PAUL D. EMERY REVOCABLE LIVING TRUST, DATED DECEMBER 20, 1990**, who acknowledged that he did sign and seal the foregoing instrument, and that the same is his free act and deed.

5th IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of February, 1997.



 Notary Public

My Commission Expires:

JOHN M. COYNE, Attorney-At-Law
Notary Public, State of Ohio
 My Commission has no expiration date
 Sec. 147.03 F.O.

This Instrument Prepared By:
 Roetzel & Andress
 A Legal Professional Association
 75 East Market Street
 Akron, OH 44308

169965_1.WPS

22355-1116

RECEIVED BY AUDITOR
FEE \$

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242829

O.R. _____ PG. 1114-1117

COUNTY OF SUMMIT
RECEIVED & RECORDED

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MAIL TO:

DOCUMENT NUMBER

OFFICIAL RECORD
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(PAGE 1 OF RECORD)

MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that **PAUL D. EMERY, TRUSTEE OF THE PAUL D. EMERY REVOCABLE LIVING TRUST, DATED DECEMBER 20, 1990** (hereinafter referred to as the "Mortgagor"), for Ten and No/100ths Dollars (\$10.00) paid, grants with mortgage covenants, to **TIM DAVIS and CHARLOTTE DAVIS** (hereinafter referred to as the "Mortgagee"), the following real property:

Situated in the Township of Copley, County of Summit and State of Ohio and known as being part of Lot No. 27 of said Township, and more fully bounded and described as follows: Beginning at a spike set at the intersection of the centerline of Copley Road (S.H. No. 162) 60' wide with centerline of Jacoby Road (C.H. No. 205) 60' wide; Thence South 57 degrees 19' 23" East along the centerline of Copley Road 830.00 feet to a spike (witness an Iron Pin set North 0 degrees 05' 12" West 35.68 feet from this point); Thence North 0 degrees 05' 12" West parallel with the centerline of Jacoby Road a distance of 979.18 feet to lead-center monument; Thence South 89 degrees 54' 48" West at a right angle to the centerline of Jacoby Road 697.96 feet to a spike set on the centerline of Jacoby Road (witness an Iron Pin set North 89 degrees 54' 48" East 30.00 feet from this point; Thence South 0 degrees 05' 12" East along the centerline of Jacoby Road 530.00 feet to the place of beginning, as surveyed February, 1959 by Robert J. Fish, Registered Surveyor No. 4240.

Exception therefrom the following:

Parcel No. 1

Situated in the Township of Copley, County of Summit and State of Ohio and known as being a part of Lot No. 27 of said Township and being more fully described as follows: Beginning at the centerline intersection of Copley Road (State Highway No. 162) and Jacoby Road, a distance of 152.50 feet to a point, said point being the true place of beginning of the parcel herein described; Thence continuing North 0 degrees 05' 12" West along said centerline of Jacoby Road, a distance of (377.50) feet to a point; Thence North 89 degrees 54' 48" East perpendicular with the centerline of Jacoby Road, a distance (361.50) feet to a point; Thence South 0 degrees 05' 12" East parallel with the centerline of Jacoby Road a distance of (377.50) feet to a point; thence South 89 degrees 54' 48" West, a distance of (361.00) feet to the place of beginning, as surveyed in February 1973 by Robert J. Schleicher, Registered Surveyor, with Emmet J. McDonald and Associates.

Parcel No. 2

Situated in the Township of Copley, County of Summit and State of Ohio and known as being part of Original Lot 27 in said Township, more fully

described as follows: Beginning at the centerline intersection of Copley Road (State Route No. 162) and Jacoby Road (County Highway No. 205); Thence North 00 degrees 05' 12" West, along the centerline of Jacoby Road, a distance of 106.37 feet to a point; Thence North 89 degrees 54' 48" East a distance of 155.00 feet to an iron pipe and passing over an iron pipe set a distance of 30 feet from the centerline of Jacoby Road; Thence South 00 degrees 28' 06" East, a distance of 207.01 feet to a point in the centerline of Copley Road and passing over an iron pipe set a distance of 35.83 feet from said centerline; Thence North 57 degrees 19' 23" W., along the centerline of Copley Road, a distance of 185.96 feet to the place of beginning as surveyed in November, 1974 by Walter W. Dobbins, Registered Surveyor with Emmet J. McDonald and Associates.

The said mortgage covenants are subject, however, to all applicable zoning and use restrictions; legal highways; taxes and assessments not yet due and payable; and all restrictions, conditions, limitations, rights of way, reservations and easements of record which will not render title to the premises unmarketable.

This Mortgage is given, upon the statutory conditions, to secure the payment of Fifteen Thousand Dollars (\$15,000.00) with interest as provided in note dated October 1, 1995.

"Statutory condition" is defined in section 5302.14 of the Revised Code and provides generally that if the Mortgagor pays the principal and interest secured by this Mortgage, performs the other obligations secured hereby and the conditions of any prior mortgage, pays all the taxes and assessments, maintains insurance against fire and other hazards, and does not commit or suffer waste, then this Mortgage shall be void.

IN WITNESS WHEREOF, the said Mortgagor herein caused this document to be signed this 5th day of February, 1997.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

Sandra L. McGee

First Witness

Sandra L. McGee

(Print or Type Name)

John A. Coyne III

Second Witness

John A. Coyne III

(Print or Type Name)

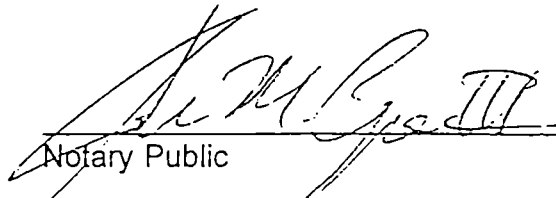
By: Paul D. Emery, Trustee

PAUL D. EMERY, Trustee of the
Paul D. Emery Revocable living Trust
dated December 20, 1990

STATE OF OHIO)
) ss:
COUNTY OF SUMMIT)

Before me, a notary public, in and for said County, personally appeared the above-named **PAUL D. EMERY, TRUSTEE OF THE PAUL D. EMERY REVOCABLE LIVING TRUST, DATED DECEMBER 20, 1990**, who acknowledged that he did sign and seal the foregoing instrument, and that the same is his free act and deed.

5th IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of February, 1997.



Notary Public

My Commission Expires:

JOHN M. COME, Attorney at Law
Notary Public - State of Ohio
My Commission Expires: 12/31/99
Sec. 14703.02, R.C.

This Instrument Prepared By:
Roetzel & Andress
A Legal Professional Association
75 East Market Street
Akron, OH 44308

169577_1.WPS

APPENDIX C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN THE MATTER OF:

Copley Square Plaza Site
Copley, Summit County, Ohio

) EPA REGION 5 DOCKET NO.

)
) **V-W- '90-C-529**
) AGREEMENT AND COVENANT
) NOT TO SUE:
)

UNDER THE AUTHORITY OF THE
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND
LIABILITY ACT OF 1980, 42 U.S.C.
Section 9601, et seq., as amended.

)
)
) AMERI-CON, INC.
) AMERI-CON COPLEY, LTD.
)

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Ameri-Con, Inc., and Ameri-Con Copley, Ltd. (collectively the "Parties").

EPA enters into this Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Section 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

Ameri-Con, Inc. and Ameri-Con Copley, Ltd. ("Settling Respondents") are an Ohio corporation and Limited Liability Company, respectively, that are engaged in the business of developing, constructing, and selling residential housing units. Settling Respondents have entered into a contract with the O'Shux, Inc. to purchase property owned by the O'Shux, Inc. and located at 2715 Copley Road, Copley, Summit County, Ohio ("Property"). The Property is part of the Copley Square Plaza Site ("Site"). From August 18, 1994 to April 1, 1995, the EPA, pursuant to its authority under CERCLA, conducted response actions to respond to releases

and/or threatened releases of hazardous substances from the Site. During its response actions at the Site, EPA discovered that the groundwater contamination plume migrated onto the Property. Currently, there is Existing Contamination at the Property.

Ameri-Con Copley, Ltd will construct 132 housing sites either in condominium ownership or in fee simple lots in accordance with Copley Township, Ohio zoning provisions and sell the units, at affordable prices, to families.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondent at the Property which would otherwise result from Settling Respondent becoming the owner of the Property.

The Parties agree that the Settling Respondents' entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondents.

The resolution of this potential liability, in exchange for provision by the Settling Respondents to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
2. "Existing Contamination" shall mean any hazardous substances, pollutants or

contaminants, present or existing on or under the Property as of the effective date of this Agreement.

3. "Parties" shall mean EPA, and the Settling Respondents.

4. "Property" shall mean that portion of the Site which is described in Exhibit 1 of this Agreement, which was formally owned by the O'Shux Inc.

5. "Settling Respondents" shall mean Ameri-Con, Inc. and Ameri-Con Copley, Ltd.

6. "Site" shall mean the Copley Square Plaza Site, encompassing approximately six (6) acres, located at 2777 through 2799 Copley Road, Copley Township, Summit County, Ohio and designated by the property description attached as Exhibit 2. The Site shall also include the Property, located at 2715 Copley Road, Copley Township, Summit County, Ohio, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located.

7. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

8. From August 22, 1994 until April 1, 1995, the U.S. EPA conducted an emergency removal action in response to the actual or threatened releases of hazardous substances at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. The removal action was taken to mitigate threats posed by the presence of solvents contaminated with tetra- chloroethylene, trichloroethylene, cis-1,2-dichloroethylene, and vinyl chloride located in pit liquids, groundwater and soils at the Site. These substances were found in the expended wash water of an abandoned dry cleaning operation at the Site. Leakage from on-site pits contaminated both the groundwater beneath the dry cleaner building foundation, and nine residential wells. EPA discovered that the contaminated groundwater plume had migrated onto the Property that is the subject of this Agreement. The Property currently contains a golf course driving range with a pro shop and

parking lot. Settling Respondents plan to convert the golf course into residential condominium units.

9. The Settling Respondents represent, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondents have had no involvement with the Property and the Site prior to their negotiation with the O'Shux, Inc. for purchase of the Property.

IV. PAYMENT

10. Pursuant to a Consent Decree entered on _____ by the U.S. District Court for the Northern District of Ohio in United States v. Paul D. Emery, Trustee of the Paul D. Emery Revocable Living Trust, and 6 ACRES OF LAND, Located in Summit County, Ohio, Civil Action No. _____, the United States will receive consideration for this agreement.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

11. Commencing upon the date that it acquires title to the Property, Settling Respondents agree to provide to EPA and its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondents, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondents of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

12. Within 30 days after Respondents take title to the Property, the Settling Respondents shall record a certified copy of this Agreement with the Recorder's Office, Summit County, State of Ohio and send notice of such recording to the persons listed in Section XV (Notices and Submissions). Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement.

13. The Settling Respondents shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. The Settling Respondents shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement. Settling Respondents shall be in compliance with this paragraph if they provide a provision in any Deed Restriction or Condominium Document that binds all future purchasers of condominiums or single family lots to the requirements of this Agreement, thus ensuring that all future purchasers provide access, cooperation, and fully comply with the terms of this Agreement.

VI. DUE CARE/COOPERATION

14. The Settling Respondents shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondents recognize that the implementation of response actions at the Site may interfere with the Settling Respondents' use of the Property, and may require closure of their operations or a part thereof. The Settling Respondents agree to cooperate fully with EPA in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law,

to use reasonable efforts to minimize any interference with the Settling Respondents' operations by such entry and response. In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. Section 9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

15. By entering into this agreement, the Settling Respondents certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA all information known to Settling Respondents and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondents is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

16. Subject to the Reservation of Rights in Section IX of this Agreement, the United States, consistent with Section XI of the consent decree entered in U.S. v. Paul D. Emery Trust

_____, covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. Sections 9606 or 9607(a) with respect to the Site.

IX. RESERVATION OF RIGHTS

17. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondents to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), Section XIV (Payment of Costs).

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondents, their successors, assignees, lessees or sublessees; provided however, that nothing in this paragraph shall be construed as an admission by Settling Respondents that they could be liable for the actions of any successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondents, their successors, assignees, lessees or sublessees, of Existing Contamination; provided however, that nothing in this paragraph shall be construed as an admission by Settling Respondents that they could be liable for the actions of any successors, assignees, lessees or sublessees;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(g) liability for violations of local, State or federal law or regulations.

18. With respect to any claim or cause of action asserted by the United States, the Settling Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

19. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

20. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondents to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondents acknowledge that they are purchasing property where response actions may be required.

X. SETTling RESPONDENTS' COVENANT NOT TO SUE

21. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect

claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. Section 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

22. The Settling Respondents reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondents' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. Section 9611, or 40 C.F.R. Section 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

23. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding on the Settling Respondents, their officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

24. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondents under this Agreement may be assigned or transferred to any person who purchases a portion of the Property from Settling Respondents either as a condominium or fee simple lot.

25. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

XII. DISCLAIMER

26. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

27. The Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. FAILURE TO COMPLY

28. If the Settling Respondents fail to comply with the terms of this Agreement, they

shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Agreement, notice is required to be given or a document sent by one Party to another, it shall be directed to the individuals at the addresses specified below.

As to EPA

Roger Grimes
Associate Regional Counsel
U.S. EPA
(C-14J)
77 West Jackson Boulevard
Chicago, IL 60604-3590

As to Settling Respondents

Dale H. Markowitz
Thrasher, Dinsmore & Dolan
100 7th Avenue, Suite 150
Chardon, Ohio 44024-1079

XVI. EFFECTIVE DATE

30. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondents that EPA has fully executed the Agreement after review of and response to any public comments received.

XVII. TERMINATION

31. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written

agreement from the other party to terminate such provision(s).

XIII. CONTRIBUTION PROTECTION

32. With regard to claims for contribution against Settling Respondents, the Parties hereto agree that the Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

33. The Settling Respondents agree that with respect to any suit or claim for contribution brought by them for matters related to this Agreement they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

34. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against it for matters related to this Agreement they will notify in writing the United States within 10 days of service of the complaint on them.

XIX. EXHIBITS

35. Exhibit 1 shall mean the description of the Property which is the subject of this Agreement.

36. Exhibit 2 shall mean the map depicting the Site.

XX. PUBLIC COMMENT

37. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts

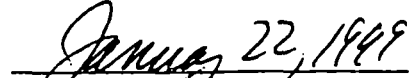
or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

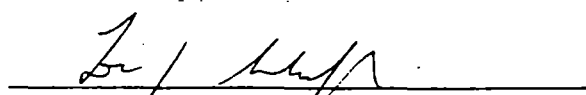
IT IS SO AGREED:

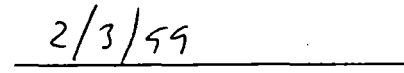
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:


Regional Administrator, Region 5

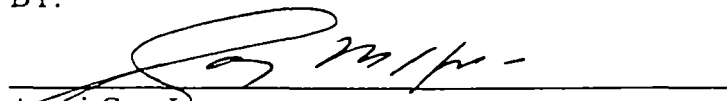

Date

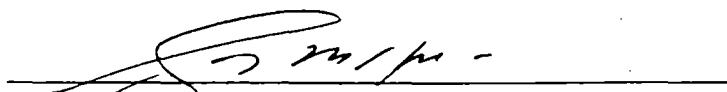

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice


Date

IT IS SO AGREED:

BY:


Ameri-Con, Inc.


Ameri-Con Copley, LTD.